IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 490 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRAKUMAR SURYAKANT PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DF AMIN for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/09/2000

ORAL JUDGEMENT

1. A short question of law regarding interpretation of Section 344 (4) of the Code of Criminal Procedure is involved in this revision. The factual backdrop in which this instant revision has been filed may shortly be narrated as under :

2. The two revisionists Jitendrakumar Patel and Kamlesh Patel were prosecution witnesses in Sessions Case No.82/97 and 133/97. Six accused were tried by the Additional Sessions Judge, Kheda at Nadiad for offences

punishable u/s. 302 read with Section 34 and Section 120(B) I.P.Code. These two revisionists who were witnesses for the prosecution attended test identification parade in which they correctly identified the assailant before the Executive Magistrate in such parade. However, when they were examined as prosecution witnesses before the Addl. Sessions Judge they turned hostile and refused to identify the assailant. In the two trials some of the accused were acquitted and some were convicted. The State preferred Appeal against the portion of the judgment under which some of the accused were acquitted. The accused were convicted, preferred Appeal against order of conviction before this Court. Both the Appeals are said to be pending.

3. It further appears that certain observations were made by the trial Judge while deciding the Sessions Case and observed that prima facie the two revisionists committed offence of purgery. Accordingly show cause notice was issued to them purporting to be notice u/s.344(1) Cr.P.C. In that notice they were asked to explain why they should not be punished for committing the offence of purgery. From such notice it is obvious that the Court below did not choose to act u/s.344(3) Cr.P.C. rather it took cognizance of the offence to be tried as summary trial and show cause notices were issued to the revisionist.

4. In response to the show cause notice the revisionist appeared before the Court below and moved an application that the proceeding in this case arising out of Sessions Case No.82 of 1997 be stayed because of pendency of Appeal filed by some of the accused as well as by the State. This request for staying the proceeding in summary trial was rejected by the learned Addl. Sessions Judge through the impugned order, hence this revision.

5. Shri D.F.Amin, learned Counsel for the revisionists has argued that the interpretation to Section 344(4) Cr.P.C. rendered by the Court below is patently erroneous hence the revision may be allowed. This, therefore, takes me to the question of interpretation of Section 344(4) Cr.P.C.

6. Section 344(4) Cr.P.C. provides that where after any action is initiated under sub.section 1 it is made to appear to the Court of Magistrate of the First Class that an Appeal or the Application for revision has been preferred or filed against the Judgment or order in which the opinion referred to in that sub-section has been

expressed it or he shall stay further proceeding of the trial till the disposal of Appeal or the Application for revision as the case may be and thereupon further proceeding of the trial shall abide by the result of the Appeal or Application for revision.

7. A plain reading of this section shows that the interpretation rendered by the Court below is absolutely incorrect. What the Court below intended was that the two witnesses to whom the show cause notice was issued u/s. 344(1) Cr.P.C. should first face summary trial and if in the summary trial they are convicted they can file Appeal and then the proceeding will be stayed. This is something ashtonishing and perverse interpretation of Section 344(4) Cr.P.C. On the other hand correct interpretation of this section is that if certain opinion has been expressed in the Sessions case against the two witnesses and it was observed that they prima facie committed offence of purgery the show cause notice could be issued u/s.344(1) Cr.P.C. However, after initiation of proceeding u/s. 344(1) Cr.P.C. if it is made to appear to the Court, may be the Court of Sessions or the Magistrate, who has expressed any opinion against the witnesses, and on the basis of that expression of opinion action is proposed to be taken u/s. 344(1) Cr.P.C. and it is brought to the notice of the Sessions Court or the Magistrate that an Appeal has been filed or a revision has been preferred against the Judgment in which adverse opinion was expressed against the witnesses then it is mandatory for the Court to stay hands and stay further proceedings in the trial. The word "trial" in Section 344(4) Cr.P.C. means summary trial contemplated u/s. 344(1) Cr.P.C. It is further provided in this sub-section that the proceeding shall be stayed until disposal of the Appeal or the Application of revision as the case may be and thereafter further proceedings of the trial shall abide by the results of the Appeal or the Application for Revision. The word "shall" in sub-section 4 denotes that it is mandatory and once it is brought to the notice of the Sessions Judge or the Magistrate that Appeal or Revision has been filed against the Judgment in which opinion was expressed against the witnesses then such Court is bound to stay the trial, namely, summary trial contemplated u/s.344(1) Cr.P.C. and subsequently if the result of Appeal or the Revision against the main judgment is brought to the notice of such court it shall proceed in accordance with the decision of the Appeal or the Revision. The intention of the Legislature which was gathered by the Court below was totally misdirected. The Legislature on the other hand intended that it is just possible that in Appeal or

Revision the High Court may take different view regarding appreciation of evidence and the witnesses who are proposed to be proceeded with and tried summarily u/s.344(1) Cr.P.C. If the Appellate or the revisional Court does not agree with the opinion expressed by the trial Court in the main trial in such event it will be futile exercise to proceed against the witness against whom adverse opinion was expressed by the Court below. Any interpretation to the contrary would be violative of the legislative mandate contained u/s.344(4) Cr.P.C.

8. In view of above interpretation of Section 344(4) Cr.P.C. I am of the view that the Court below was apperantly in error in rejecting the request of the revisionists to stay further proceedings in the summary trial initiated u/s.344(1) Cr.P.C. against them. The Court below was further in error in forcing the revisionists to file reply to the show cause notice so that the summary trial may proceed. As such the Revision is allowed. The impugned order is set aside. The proceedings arising out of show cause notice u/s.344(1) Cr.P.C. against the revisionist shall remain stayed during pendency of Appeal filed by the convicted accused and also the appeal filed by the State of Gujarat.

sd/-

Date : September 07, 2000 (D. C. Srivastava, J.)

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